

DIRECT APPEALS TO FIRST CIRCUIT COURT OF APPEALS 28 U.S.C. §158(d)(2)

- **Statutory References:** 28 U.S.C. § 158(d); Interim Federal Rules 8001(f) and 8003(d).
- A direct appeal from a bankruptcy court order, judgment or decree to the First Circuit Court of Appeals can come about in one of three ways:

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- **The Court on its own initiative:**
 - The Court must find that **one of the three reasons** listed in Section 158(d)(2)(A) exists:
 - (a) The judgment/order involves a **Question of law where there is no controlling decision** from Court of Appeals or U.S. Supreme Court and it involves a matter of public importance;
 - (b) The judgment/order involves a **question of law requiring the resolution of conflicting decisions**; or
 - (c) An immediate appeal from the judgment/order may **materially advance the progress of the case** or proceeding.
 - A 13 day Response deadline will be set to file “a short supplementary statement” if parties so desire.

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- **On Motion of one or more parties**— but fewer than all of the Appellants and Appellees
 - The Appellee or Appellant can file a **“Petition “Requesting Direct Appeal”** containing:
 - (a) facts necessary to understand the question presented;
 - (b) the question itself;
 - (c)the relief sought;
 - (d) the reason why the direct appeal should be allowed including why one of the three circumstances specified in the statute exists; and
 - (e) attach a copy of the order/judgment and any related opinion.
 - **A 13 day response deadline will be set.**

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- **Certification by All Appellants and All Appellees Acting Jointly– Official Form 24**
 - All of the parties to the appeal can decided to certify the matter to the Court of Appeals by completing and filing Official Form 24
- New CM/ECF Event: **“Certification of Direct Appeal to Court of Appeals.”** The form “may” be accompanied with a short statement setting forth the basis for the certification.

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- The Court will then transmit the Certification to the Court of Appeals.
- This Certification can only be accepted for docketing **AFTER** a notice of appeal or motion for leave to appeal has been filed. If the certification is filed before the appeal, it will be stricken from the docket. See Interim Federal Rule 8001(f)(1)

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- **Timing & Filing:**

- Under any of the three scenarios, a Certification can only be filed in the Bankruptcy Court until the appeal has been transmitted and “docketed” in either the BAP or District Court pursuant to Fed. R. Bankr. P. 8007(b).
- If the certification or Petition Requesting Direct Appeal is filed after that time, it will be referred to the BAP or the District Court.
- A certification made by the bankruptcy court *sua sponte* or upon the request of all parties must be done within 60 days of the entry of the order being appealed.